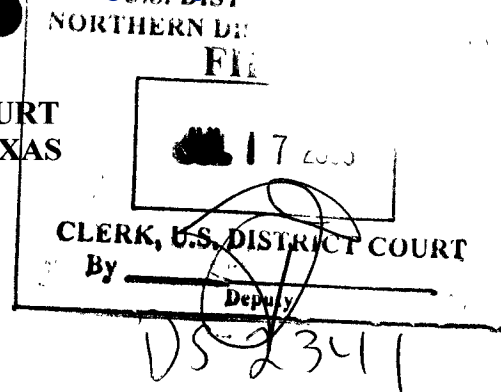


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



JEREMY FUHLMAN

Plaintiff,

VS.

HARLEY-DAVIDSON MOTOR
COMPANY a/k/a HARLEY DAVIDSON
MOTOR COMPANY, INC.

Defendant.

CIVIL ACTION NO. _____

306 - CV1272 - G

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW JEREMY FUHLMAN, hereinafter referred to as Plaintiff, and files this his Original Complaint complaining of HARLEY-DAVIDSON MOTOR COMPANY a/k/a HARLEY DAVIDSON MOTOR COMPANY, INC., hereinafter referred to as Defendant, and states the following:

A. Parties

1. Plaintiff Jeremy Fuhlman resides in Corinth, Denton County, Texas.
2. Defendant Harley-Davidson Motor Company a/k/a Harley Davidson Motor Company, Inc. ("Harley-Davidson") is a foreign Corporation doing business in Texas and service of process upon this Defendant may be had by serving its registered agent, CT Corporation 350 N. St. Paul Street Dallas, Texas 75201.

B. Jurisdiction

3. This court has jurisdiction over the lawsuit under the provisions of 28 U.S.C. Section 1332 and Section 1441 (c). The parties to this lawsuit are citizens of different states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

PLAINTIFF'S ORIGINAL COMPLAINT

C. Facts

4. On or about March 14, 2006, Jeremy Fuhlman was riding his 2002 Harley-Davidson (Vin # 1HD1BMY162Y035647) on State School Road when he attempted to slow his bike in traffic.

5. Upon depressing the brake lever, the lever broke (Patent No. 5311792) causing the front tire to lock up, which required him to lay down the bike on its left side.

6. This accident caused Mr. Fuhlman to be thrown from the bike resulting in severe injuries.

D. Causes of Action
As To Defendant Harley-Davidson.

7. It was entirely foreseeable to and well-known by the Defendant that accidents and incidents involving its product, such as occurred herein, would on occasion take place during the normal and ordinary use of said product.

8. The injury occurred because the product in question was not reasonably designed, manufactured, marketed, assembled, and/or tested nor reasonably fit for unintended, but clearly foreseeable accidents. The product in question was unreasonably dangerous in the event it should be involved in an incident such as occurred herein because Defendant's lever failed during ordinary use.

9. Defendant designed, manufactured, marketed, assembled and/or tested product in question to be unreasonably dangerous and defective within the meaning of Section 402(A) Restatement (Second) Torts in that the product was unreasonably dangerous as designed, manufactured, assembled, marketed and tested because Defendant knew that the bike would be involved such incidents. None-the-less, the brake lever failed allowing for the accidents as occurred herein to occur.

10. Defendant was negligent in the design, manufacture, assembly, marketing and testing of the brake lever and related components.

11. Defendant is liable to Plaintiff under the law as described in 402(B) Restatement (Second) Torts in that it represented said product to be safe, when in fact it was unsafe, defective, unreasonably dangerous, and unfit for the ordinary purpose for which it was intended. Defendant thereby made a material representation as to the safety quality of the product in question and such representation was false. Further, the bike was inadequately labeled to warn potential consumers of the dangers since Defendant knew that the potential of the brake lever and/or related components to fail allowing for accidents such as occurred herein to happen.

12. Defendant is liable to Plaintiff under the law as described in Tex. Bus. & Com. Code 2.314 in that it represented said product to be safe, when in fact it was unsafe, defective, and unreasonably dangerous. Defendant thereby made a material representation as to the safety quality of the product in question and such representation was false.

13. The foregoing acts and/or omissions of Defendant were a producing and/or proximate cause of the Plaintiff's damages.

14. The foregoing acts and omissions of Defendant were a producing and/or proximate cause of Jeremy Fuhlman's serious injuries.

E. Damages to Plaintiff

15. As a result of the acts and/or omissions of Defendant, Plaintiff Jeremy Fuhlman has suffered extreme emotional distress, mental anguish and loss of consortium in the past and, in all likelihood, will into the future as a result of his injuries.

16. Plaintiff Jeremy Fuhlman has suffered lost wages in the past and will suffer a diminished earning capacity due to his injuries.

17. As a result of the acts/or omissions of Defendant, Plaintiff Jeremy Fuhlman has become obligated to pay reasonable and necessary medical expenses in the past and will likely incur medical expenses into the future.

18. As a result of the acts/or omissions of Defendant, Plaintiff Jeremy Fuhlman has become obligated to pay reasonable and necessary repair costs for his Harley-Davidson bike.

19. The above and foregoing acts and/or omissions of Defendant, resulting in the injuries and damages to Plaintiff has caused actual damages to Plaintiff in an amount in excess of the minimum jurisdictional limits of this Court.

F. Prayer

20. For these reasons, Plaintiff asks for judgment against Defendant for

- a. actual damages;
- b. prejudgment and post-judgment interest beginning March 14, 2006;
- c. costs of suit; and
- d. all other relief the court deems proper.

Respectfully submitted,

HOSACK-MATTHEWS
& Associates



Stewart D. Matthews
State Bar No. 24039042
2817 Regal Road
Suite 105
Plano, Texas 75075

ATTORNEYS FOR PLAINTIFF

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of filing the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

Jeremy Fuhlman

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Harley-Davidson Motor Company a/k/a
Harley-Davidson Motor Company, Inc

County of Residence of First Listed _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hosack-Matthews & Associates
2817 Regal Road, Suite 105
Plano, Texas 75075
(972) 398-6666

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☒ 2 Incorporated and Principal of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input checked="" type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination <input type="checkbox"/> Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This Court has jurisdiction over the lawsuit under the provisions of 28 U.S.C. §28 1332 Defendants liable under 402 (A) Restatement 2nd Torts

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions)

JUDGE

DOCKET
NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____